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In re Application of:

Carlsson et al.

Application No.: 09/868,526

PCT No.: PCT/SE99/02311

Int. Filing Date: 10 December 1999

Priority Date: 22 December 1998

Atty. Docket No.: CU-2571

For: Tool Handle

DECISION

ON

PETITION

This is in response to the petition filed on 30 July 2009, which is being treated as a renewed petition under 37 CFR 1.137(b), a renewed petition under 37 CFR 1.47(b) and a renewed submission under 37 CFR 1.42.

DISCUSSION

Petition Under 37 CFR 1.137(b)

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), the required reply has not been submitted, as described below.

Requirements (2), (3) and (4) were satisfied previously.

Petition Under 37 CFR 1.47(b)

In a Decision mailed on 30 March 2009, the petition filed on 03 July 2008 was treated under 37 CFR 1.47(b) and dismissed, without prejudice, because petitioner had not satisfied requirements 2, 4, 5 and 6.

Regarding requirement (2), petitioner states that "another certified letter was sent to Ms. Irene Elvingsson-Carlsson." Petitioner indicates that the letter was accompanied by a copy of the international application and a declaration, and that she has failed to return a signed declaration. In support, an affidavit of Per Munktell has been provided. Mr. Munktell explains the Swedish postal procedure he used to send a letter to Ms. Elvingsson-Carlsson on 28 May 2009. Among other documentation, Mr. Munktell has provided a copy (and translation) of the letter, which indicates that both a copy of the application and the declaration were attached thereto. Based on the totality of the evidence now of record, it would be appropriate to conclude that Ms. Elvingsson-Carlsson has refused to execute the application within the meaning of 37 CFR 1.47(b). Since the unavailability of Mr. Chalas was established previously, requirement (2) now has been satisfied.

With respect to requirement (4), petitioner has submitted a new declaration signed by Mats Bjelksjo in the capacity of Chief Executive Officer of ANZA AB. The declaration nominates "Stephan CARLSSON" in place of "CARLSSON, Stefan" nominated in the published international application, but petitioner has not explained this discrepancy (e.g., whether it arose from a mere typographical error or the like, per MPEP 605.04(b)). Mr. Bjelksjo has signed the declaration on behalf of (*inter alia*) Irene Elvingsson-Carlsson who is identified as the "legal representative of Stefan Carlsson (deceased)." The declaration lists a citizenship and address of the "nonsigning inventor," but it is not clear whether these data are meant to pertain to the legal representative or to Mr. Carlsson, since they are indicated to pertain to a "nonsigning inventor."

With respect to requirement (5), petitioner asserts that "Since Mr. Chalas will not now execute another assignment, the assignee has no choice other than to argue against this objection." Petitioner's attention is drawn respectfully to MPEP 409.03(f), which contemplates the alternative options of either demonstrating that the inventors had agreed in writing to assign the invention to the 1.47(b) applicant or providing an appropriate legal memorandum to the effect that a court of competent jurisdiction would award title of the invention to the 1.47(b) applicant. In view of these alternatives, petitioner is not seen to have no choice other than to assert that the assignment of a Swedish priority application constitutes an assignment of the instant U.S. national stage application (which it does not). Applicants may wish to avail themselves of one of the alternatives described by MPEP 409.03(f).

The instant petition provides an explicit statement in satisfaction of requirement (6).

Submission Under 37 CFR 1.42

Review of the declaration of the inventors filed on 30 July 2009 reveals that Mr. Bjelksjo has signed the declaration on behalf of (*inter alia*) Irene Elvingsson-Carlsson who is identified as the "legal representative of Stefan Carlsson (deceased)." The declaration lists a citizenship and address of the "nonsigning inventor," but it is not clear whether these data are meant to pertain to the legal representative. 37 CFR 1.497(b)(2) requires (in part) that "If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative." The declaration does not clearly satisfy this requirement. For the reasons discussed above, the declaration is defective. Hence, it would not be appropriate to accept the declaration under 37 CFR 1.42 at this time.

DECISION

The petitions under 37 CFR 1.137(b) and 1.47(b) are **DISMISSED**, without prejudice.

The declaration is **NOT ACCEPTED** under 37 CFR 1.42, without prejudice.

A proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration

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